

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELVIN X. LINDSEY et al.

v.

DONALD T. VAUGHN et. al.

O'NEILL, J.

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CIVIL ACTION

NO. 93-2030

SEPTEMBER , 2001

MEMORANDUM

Plaintiffs Melvin X. Lindsey, Bray X. Murray and Richard X. Sutton, all currently serving criminal sentences at facilities in Pennsylvania, move to set aside, or in the alternative reduce, the Clerk of Court's taxation of costs imposed against them following a judgment entered in favor of defendants.

BACKGROUND

Plaintiffs are members of the Nation of Islam and while imprisoned at SCI Graterford sued prison officials under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution challenging the institutions' ban of female visitors to Nation of Islam services. Shortly after the plaintiffs' complaint was filed, the court granted leave to proceed in forma pauperis and appointed counsel for plaintiffs. The case proceeded to trial on May 3, 1999, at the conclusion of which the jury returned a verdict in favor of defendants. All three plaintiffs filed a notice of appeal on June 9, 1999. Less than a month later Murray and Sutton withdrew their appeals. Lindsey proceeded with his appeal pro se. Twice Lindsey requested and was granted a forty-five day extension of time to file his appellate brief. Eventually, the Court of Appeals ordered him to file his brief and appendix by March 16, 2000. After he failed to submit

these materials, on May 3, 2000 the Court dismissed his appeal for failure to timely prosecute.

Defendants filed a bill of costs on or about May 11, 2000 and an identical amended bill of costs on May 30, 2000. Both sought \$2,173.06 in costs associated with the trial including witness fees, depositions, and docket fees. Following a telephone conference with counsel for the parties, on May 30, 2001, the Clerk taxed costs in favor of defendants and against plaintiffs jointly and severally in the amount of \$1,883.06. Pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure and Local Rule 54.1, plaintiffs now move to set aside this award in its entirety or, in the alternative, for a reduction in the amount of costs awarded. In the event that I impose any costs against them plaintiffs seek to have the amount divided evenly among the three plaintiffs.

My review of the Clerk's award of costs is de novo. See In re Paoli Railroad Yard PCB Litigation, 221 F.3d 449, 460 (3d Cir. 2000).

## DISCUSSION

### A. Indigence/Inability to Pay

In challenging the award made by the Clerk plaintiffs argue that it is inequitable because, as prisoners, they are “utterly indigent.” (Pl.’s Br. at 3). Defendants respond by stating that plaintiffs alleged indigence has little meaning since as state prisoners all their basic needs - shelter, food, clothing - are provided by the Pennsylvania Department of Corrections.

In Paoli the Court of Appeals stated, “[b]y mandating that, subject to court intervention, costs be allowed to a prevailing party *as of course* [Rule 54(d)(1)] creates the strong presumption that costs are to be awarded to the prevailing party.” Id. at 462 (emphasis in original). The losing party bears the burden of showing that an award is inequitable under the circumstances.

Id. at 463. In making this determination the Paoli Court noted a number of factors that are to be considered, including the relative disparity of wealth between the parties and the indigence or inability to pay of the losing party. Id. at 463. In fact, the Court regarded a losing party's inability to pay as the most important of these factors but also cited with approval appellate decisions holding that an inability to pay costs does not automatically render an award inequitable. Id. The Court directed district courts to adopt a "case-by-case" approach. Id. The Court further stated "a party may be exempted from costs if he is in fact indigent, if he has adduced evidence that he is indigent, and if the district court sees fit to reduce the costs award imposed for reasons of equity." Id. at 464. The Court held "that if a losing party is indigent or unable to pay the full measure of costs, a district court *may*, but need not *automatically*, exempt the losing party from paying costs. Id. at 464 (emphasis in original).

The evidence submitted by the plaintiffs in support of their claim of inability to pay includes the following: (1) a submission from Murray characterized by plaintiffs' counsel in the accompanying cover letter as a "statement in support of the pending motion to set aside the Clerk's order," but entitled "Request to File for Bunkruptcy [sic]," in which Murray alleges that he earns about \$30 per month and was not informed by his lawyer or the court that he would have to pay costs if he lost;<sup>1</sup> (2) an affidavit from Sutton with an accompanying receipt supporting his statement that he earns approximately fifteen dollars a month and receives no outside financial support; and (3) an affidavit from Lindsey stating that he earns between \$32.00

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<sup>1</sup> I direct Murray's attention to the Standing Order of this Court, November 8, 1990, regarding bankruptcy administration stating: "[It is hereby] ordered that any and all cases under chapter 7, 11, 12, and 13 of Title 11 and any all proceedings arising under Title 11, or arising in or related to a chapter 7, 11, 12, or 13 case under Title 11 are and shall be referred to the Bankruptcy judges for the district.

and \$34.74 per month and has no other source of income.

There is no question that plaintiffs have few financial resources. It was for this reason they were originally granted leave to pursue their claim in forma pauperis. However, statutes permitting in forma pauperis proceedings provide indigent litigants with an opportunity to litigate their claims; they ordinarily do not to relieve them from eventual payment of costs. See Marks v. Calendine, 80 F.R.D. 24 (N.D.W. Va. 1978)(finding the underlying claim to be essentially without merit and imposing costs in order to ensure that prisoners be dissuaded from bringing vexatious claims); Berryman v. Epp, 884 F. Supp. 242, 244 (E.D. Mich. 1995)(upholding an award of costs against a prisoner who was unable to pay by allowing funds to be removed from his prison account in variable amounts depending on his available balance). In Chevrette v. Marks, 558 F. Supp. 1133, 1135 (M.D. Pa. 1983) the court held that “a litigant who is granted leave to proceed in forma pauperis is *not* relieved of the obligation to pay taxable costs after his action is over, *even if he has litigated in good faith.*” (emphasis in original).<sup>2</sup> “28 U.S.C. §1915(e) and the cases decided thereunder make clear that costs may be taxed against a party who is permitted to proceed in forma pauperis.” Smith v. Southeastern Pennsylvania Transportation Authority, 47 F.3d 97, 100 (3d Cir. 1995). The circumstances under which an award is upheld or reduced is left to the discretion of the district court. See Greene v. Fraternal Order of Police, 183 F.R.D. 445, 448 (E.D. Pa. 1998).

Defendants concede that plaintiffs have very few financial resources, but respond to plaintiffs’ claims that the Clerk’s award is inequitable by asserting that as prisoners plaintiffs have no use for money and therefore they cannot be “indigent” in any meaningful sense. (See

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<sup>2</sup> Having heard the evidence in this case, I cannot conclude that the action was frivolous.

Def.'s Br. at 5). I disagree. Having reviewed plaintiffs' submissions and in light of the relative disparity in wealth between the parties, the indigence of plaintiffs and the equities of the matter before me I find that to force plaintiffs to pay the cost award assessed by the Clerk would be unduly burdensome. Therefore plaintiffs motion to set aside the Clerk of Court's taxation of costs in its entirety will be granted.

Plaintiffs also challenge the Clerk's award on the grounds that defendants' decision to wait until the resolution of Lindsey's appeal to file the bill of costs was "unreasonable and prejudicial" to Murray and Sutton. (Pl.'s Br. at 6). As I am not awarding costs I need not reach this issue.

An appropriate Order follows.

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**ORDER**

AND NOW, this            day of September, 2001, it is hereby ORDERED: plaintiffs'  
motion to set aside the Order of the Clerk of the Court granting costs to defendants is  
GRANTED. Defendants request for costs is DENIED.

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THOMAS N. O'NEILL, JR., J.